

Federal Defenders  
OF NEW YORK, INC.

Southern District  
52 Duane Street-10th Floor, New York, NY 10007  
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton  
Executive Director

Southern District of New York  
Jennifer L. Brown  
Attorney-in-Charge

March 6, 2023

**By ECF**

Honorable Vernon S. Broderick  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**Re: *United States v. Sayfullo Saipov*  
S1 17 Cr. 722 (VSB)**

Dear Judge Broderick:

Earlier today, at the charge conference, the Court denied our request for the verdict form to include a third, “non-unanimous” option for the jury’s ultimate decision, in addition to “unanimous death” and “unanimous life.” The Court also overruled our objection to including only the latter two options on the verdict form.

Those objections and requests were based on Mr. Saipov’s right to due process, to a non-arbitrary capital sentencing determination, and other rights safeguarded by the Fifth and Eighth Amendments to the Constitution and the FDPA, 18 U.S.C. §§ 3593, 3595. As discussed in our filings and colloquies on the subject, including a non-unanimous, third option on the verdict form comports with the Court’s draft instruction on non-unanimity; with how the issue has been treated in several other capital trials in the district; with the position the government long took in this case between last September as part of an agreed-upon proposed verdict form (*see* DE #566) and last Thursday, when it changed its position; and with the Court’s various preliminary instructions and statements (on which the defense reasonably relied) in which it indicated to jurors that a “nonunanimous vote for life” would be an option in this case. *See e.g.*, 10/11/22 Tr. 29-31.

As we also told the Court at today’s charge conference, the defense requests, besides including non-unanimity as an explicit third verdict option, the following:

(1) That there be two sentencing options on the verdict form, but they be presented as they were in a previous capital trial in this district, *United States v. Quinones*, No. S6-00-cr-761, DE #265 at 5 (S.D.N.Y. Aug. 12, 2004):

We the jury, by unanimous vote, find, beyond a reasonable doubt, for Capital Count \_\_\_\_, that a death sentence, rather than a sentence of life imprisonment without possibility of release, should be imposed on Sayfullo Saipov.

Yes \_\_\_\_\_ No or not unanimous \_\_\_\_\_

(2) If the Court denies our first alternative request, detailed above, then, in the alternative to that, we request the following modified version of the two verdict options in *Quinones*:

We the jury, by unanimous vote, find, beyond a reasonable doubt, for Capital Count \_\_\_\_, that a death sentence, rather than a sentence of life imprisonment without possibility of release, should be imposed on Sayfullo Saipov.

Yes \_\_\_\_\_ No \_\_\_\_\_

(3) If the Court denies both our first two alternative requests, detailed above, then in the alternative to those, we request that the Court instruct jurors and note on the verdict form (adapted from what the government suggested in their proposed instructions, DE #751-1, at 51 n.58), as follows:

If you have concluded that you are unable to reach a unanimous decision, send a note indicating that you have concluded you are unable to reach a unanimous decision.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
David Patton  
Andrew J. Dalack  
Sylvie J. Levine  
Annalisa Mirón  
David Stern

Cc: Government counsel